

responsible for attorneys' fees. In the alternative, the defendant suggests a de minimus amount be awarded.

Under Fed. R. Civ. P. 16(b) a progression order schedule "shall not be modified except upon a showing of good cause." See [*Bradford v. DANA Corp.*, 249 F.3d 807, 809-10 \(8th Cir. 2001\)](#). "In demonstrating good cause, the moving party must establish that the 'scheduling deadlines cannot be met despite a party's diligent efforts.'" [*Thorn v. Blue Cross & Blue Shield of Fla., Inc.*, 192 F.R.D. 308, 309 \(M.D. Fla. 2000\)](#) (citations omitted) (**paraphrasing** [Fed. R. Civ. P. 16](#) advisory committee notes (1983 amendment)). Moreover, "if the reason for seeking the amendment is apparent before the deadline and no offsetting factors appear, the Rule 16 deadline must govern." [*Financial Holding Corp. v. Garnac Grain Co.*, 127 F.R.D. 165, 166 \(W.D. Mo. 1989\)](#). In addition to the good cause requirement, when "a motion [is] made after the time has expired," the court may extend time "if the party failed to act because of excusable neglect." See [Fed. R. Civ. P. 6\(b\)\(1\)\(B\)](#).

The plaintiff's brief extension of time will not delay the resolution of the issues. The plaintiff's explanation for failing to timely file the motion for fees amounts to excusable neglect on the part of the plaintiff's counsel. Counsel's conduct also provides good cause for the brief extension of time. There is no showing the defendant would suffer unfair prejudice by the extension of time. In fact, the defendant had provided some substantive responses to the motion for fees in its response to the motion for extension of time. Under the circumstances, the court finds good cause and excusable neglect have been shown for the short extension of the motion deadline. Upon consideration,

IT IS ORDERED that:

1. The plaintiff's Motion for an Extension of Time Within Which to File Her Petition for Attorneys' Fees ([Filing No. 28](#)) is granted. The plaintiff need not re-file the petition.
2. The defendant shall have to **on or before October 23, 2009**, to file a response to the plaintiff's Petition for Attorneys' Fees Pursuant to the Fair Debt Collection Practices Act ([Filing No. 31](#)).

3. The plaintiff shall have to **on or before October 30, 2009**, to file a reply.
DATED this 13th day of October, 2009.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge

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